1. S.B. CIVIL WRIT PETITION No.5105/2001
DEVANAND V/s STATE OF RAJ. & OTHERS
and
2. S.B. CIVIL WRIT PETITION No.5816/99
DEAVANAND V/s STATE OF RAJ. & OTHERS

5.1.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Ashok Gaur for the petitioner.
Shri B.S. Chhaba, Dy. G.A.

Heard learned counsel for the parties.

In both the writ petitions although the impugned orders are different but are passed in litigation between the same parties and on the same date.

This is now they are connected and heard together as the petitioner was aggrieved by the order of his Tehsildar dated 31.7.96. The Tehsildar in exercise of his powers under section 91 of the Land Revenue Act, 1956 declared the petitioner trespasser in the agricultural land covered by Khasra No.639/0.65, 642/0.87,

643/0.18 and 644/0.77 having arrived at satisfaction that the petitioner illegally made certain constructions in violation of the Land Conversation Rules, 1981 and therefore became liable to be proceeded against u/s 90A of the said Act. Contention of the learned counsel for the petitioner is that the petitioner has established a brick kiln on the land in question and it was duly registered with Industries Department as a Small Scale Industry. He thereupon applied for and was granted permission for mining also by the Mining Department. He had taken the land on lease from one Budhram the original Khatedar and the said Budhram had duly got the use of the land converted from agricultural to non-agricultural. An order was passed by the Prescribed Authority under rule 8 of the Rajasthan Land Revenue (Conversion of Agricultural Land for Non-agricultural

Purposes in Rural Areas) Rules, 1992, (for short the “Rules”) has been placed on record. Learned counsel for the petitioner submits that the Tehsildar did not give any notice to him prior to passing the order of penalty. His appeal has also been wrongly rejected by the Addl. Collector, Alwar vide order dated 30.7.97 and similarly the Revenue Appellate Authority also committed error of law in rejecting the second appeal vide order dated 16.7.98. According to him, while the Addl. Collector has noted the arguments that the permission was duly obtained by the original Khatedar of Khasra No.524 but the Additional Collector although noted the afore quoted arguments but failed to give any finding on them. The Revenue Appellate Authority has wrongly rejected that argument on the basis that the land, in relation to which permission for change from agricultural to non-

agricultural use has been obtained, could not be transferred before expiry of period of two years whereas the land in dispute was leased out before expiry of two years. Learned counsel further submits that in so far as the land covered by the second petition is concerned, the petitioner did not make any construction but only used the same for excavation of sand as per the permission granted to him by the Mining Department. On the land in first petition also only Kachcha sheds necessary for running kiln have been built. The Board of Revenue also failed to correctly appreciate all these arguments and has by a perfunctory judgment upheld the orders passed by the authorities below.

On the other hand, the leaned Dy. Government Advocate argued that the orders passed by all the authorities below are perfectly justified and legally valid.

Question whether or not the service of notice on the respondents was affected and unauthorised construction was raised or not, are questions of fact which are not open to challenge in a writ of certiorari. He submits that permission was granted to the original Khatedar Budhram but in view of the bar contained in rule 10 supra, he could not transfer the land by way of lease or otherwise, before expiry of two years. He therefore, argues that the writ petition may be dismissed.

I have given my thoughtful consideration to the rival submissions and perused the record. Although it is the fact that the argument raised on behalf of the petitioner that the required permission was obtained at least in relation to the part of the land covered in the first writ petition was noted by the Addl. Collector but he omitted to give any finding on this aspect. The

Revenue Appellate Authority has however held that according to rule 10 of the Rules, the transfer of the land in relation to which permission was obtained, could not be made before the expiry of period of two years. Rule 10 provides that any land, duly converted for any non-agricultural purpose under the said rules, cannot be transferred within two years of such conversion. Rule 10 however in its letter part further provides that after two years such land may be transferred without payment of premium of obtaining permission from the prescribed authority. The fact that the petitioner had got his enterprise registered as small scale industry and further that he also obtained permission from the Mining Department excavation of soil and also that permission for land conversion was obtained from the competent authority under the aforesaid rules, albeit by original Khatedar, are

certainly factors which should weigh in favour of the petitioner. All these factors taken together reflect that the petitioner had been intended to abide by the laws on the subject. But then the fact remains that the question, whether or not the constructions have been actually raised or they are Pucca or Kuchcha in nature and further whether or not, as alleged by the petitioner, service of notice on him was duly affected, are all questions of fact which cannot be re-appreciated in a writ of certiorari. All that this court in its jurisdiction under Article 227 of the Constitution of India has to see as to if the orders/judgments passed by the subordinate court or tribunal, suffer from any error apparent on the face of record. On examination of the orders/judgments passed by all the authorities below, I do not find that any of them suffer from any such error

as may be apparent on the face of record warranting interference by this court. At the same time, however, the mitigating factors enumerated above, certainly entitles the petitioner to reduction in the quantum of penalty, particularly when he was merely running a brick kiln as small scale industry with due permission from Industries and Mining Departments. In the facts and circumstances of the case, ends of justice would be met if the quantum of penalty as imposed in the first writ petition to the tune of Rs.38,550/- and in the second petition Rs.40,500/- is reduced to half. While, therefore, upholding the orders passed by the authorities below, I partly allow the writ petition to the extent of penalty by reducing the quantum of penalty to half the amount of originally imposed.

Both the writ petitions are accordingly disposed of with no orders as to costs.

(MOHAMMAD RAFIQ),J.

CHAUHAN/